

04-40203
MOTION UNDER 28 USC § 2255 TO VACATE SET ASIDE OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>District of Massachusetts</u>
Name of Movant <u>Puggi J. Vasquez</u>	Prisoner No. <u>80149-038</u>	Docket No. <u>98-CR-40035</u>
Place of Confinement <u>F.C.I. Fort Dix, Unit 5751, P.O. Box 2000, Fort Dix, New Jersey 08640</u> <small>(include name upon which convicted)</small>		
UNITED STATES OF AMERICA		v. <small>(full name of movant)</small>
MOTION		
1. Name and location of court which entered the judgment of conviction under attack <u>U.S. District Court,</u> <u>U.S. Courthouse, 595 Main Street, Worcester, MA 01608</u>		
2. Date of judgment of conviction <u>March 27, 2002</u>		
3. Length of sentence <u>87 Months</u>		
4. Nature of offense involved (all counts) <u>Conspiracy to distribute controlled substances,</u> <u>violation of 21 U.S.C. § 846; Distribution of cocaine, violation of</u> <u>21 U.S.C. § 841(a)(1)/(b)(1)(C)</u>		
5. What was your plea? (Check one) (a) Not guilty <input type="checkbox"/> (b) Guilty <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/> If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____ _____ _____		
6. Kind of trial: (Check one) (a) Jury <input type="checkbox"/> (b) Judge only <input checked="" type="checkbox"/>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

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9. If you did appeal, answer the following:

(a) Name of court U.S. Court of Appeals For The First Circuit

(b) Result Sentence affirmed

(c) Date of result July 10, 2003

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

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(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of Result _____

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(3) Third petition, etc. Yes ☐ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Defense Counsel Was Unconstitutionally Ineffective By Ignoring Clear Law That The Defendant Was Entitled To A Particularized Determination Of His Culpability In The Drug Crime:

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

Mr. Vasquez' only non-incidental participation in this conspiracy was misprison of felony when he learned that drugs were being stored in the apartment he was occupying. He only knew about his predicament for about 16 days before he was surrendered to the indictment.

B. Ground two: Defense Counsel Was Unconstitutionally Ineffective For Failing To Make The Full Argument Why Mr. Vasquez Returned To The United States And Have Him Explain At Sentencing:

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

Defendant was denied credit for acceptance of responsibility. He could receive credit for any proper showing up to the instant of sentencing, allowing that the Court would determine sincerity at its discretion. Mr. Ricciardi failed to elaborate that Mr. Vasquez had explained he wanted to return out of his sense of duty and responsibility also. See Memorandum.

C. Ground three: The Defendant Was Unconstitutionally Sentenced For Conduct Not Charged By Indictment, Not Determined By The Jury, and Not Found To Be True Beyond A Reasonable Doubt:

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

Mr. Vasquez was sentenced to obstruction of justice and the the major drug quantity to this case based on a preponderance of the evidence as determined by the Court. He was constitutionally entitled to be formally charged and to

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defend himself before a jury to a beyond a reasonable doubt
standard of proof.

D. Ground four: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

Issue I and II require extra-record facts and are presented for the
deficiencies of defense counsel to argue. They could not be pre-
sented in any meaningful fashion on direct review. Issue III is
based on a retroactive development of law since sentencing.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Vincent F. Ricciardi, Jr., Esquire, 47 Harvard St.
Worcester, Massachusetts 01609

(b) At arraignment and plea Same

(c) At trial Same

(d) At sentencing Same

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(e) On appeal Jeffrey M. Brandt, Esq., Robinson & Brandt, P.S.C., 11331
Grooms Road, Suite 3000, Cincinnati, Ohio 45242

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☐

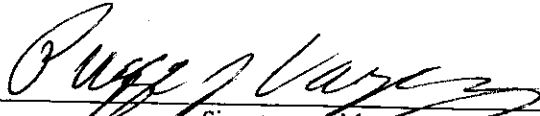
Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

10-7-04

(date)



Signature of Movant
Puggi J. Vasquez, Pro Se